

Decision **DRAFT DECISION OF COMMISSIONER KENNEDY** (Mailed 3/4/03)
(Revised 4/2/03 by tjs)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California
Water Service Company (U 60 W), a Corporation,
for an Order Authorizing It to Increase Rates
Charged for Water Service at Each of Its
Operating Districts to Recover Increased
Operating Expenditures at Its General Office.

Application 01-09-062
(Filed September 10, 2001)

And Related Matters.

Application 01-09-063
Application 01-09-064
Application 01-09-065
Application 01-09-066
Application 01-09-067
Application 01-09-068
Application 01-09-069
Application 01-09-070
Application 01-09-071
Application 01-09-072
Application 01-09-073
Application 01-09-074

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James Weil, for Aglet Consumer Alliance, interested
party.
Sung Han, for Office of Ratepayer Advocates.
Laura J. Tudisco, Attorney at Law, for Office of
Ratepayer Advocates.

INTERIM OPINION ESTABLISHING AN EFFECTIVE DATE OF THE FINAL DECISION

Summary

By this interim order, California Water Services Company's (Cal Water) test year 2003 results of operations and rates that will ultimately be adopted in this proceeding shall be effective on the date of today's decision. By taking such action, we are not prejudging the results of these general rate cases (GRC), or the changes in authorized rates, if any. However, we do place customers on notice that when new rates are finally adopted, they will be recovered as of the effective date of today's decision.

1. Background

On September 21, 2001, Cal Water filed the above-captioned applications seeking rate increases in each district to produce an overall rate of return of 9.41% in 2002, and 9.46% in 2003, 2004, and 2005. These rates of return produce a return on equity of 10.75% in each of the four years. Notice of filing of the applications appeared in the Commission's Daily Calendar on October 18 and 19, 2001. In Resolution ALJ 176-3074, the applications were preliminarily categorized as ratesetting.

On November 19, 2001, ORA filed its protests to each of the applications. In each protest, ORA stated that it was conducting discovery, investigation, and analysis to address issues such as whether the estimated levels of revenues, expenses and rate base were just and reasonable and in the public interest. The assigned ALJ held a Prehearing Conference (PHC) on November 26, 2001, February 4, 2002, and April 22, 2002. At the first two PHCs, ORA and Cal Water resolved outstanding discovery issues and set a procedural schedule for the

remainder of the proceeding. At the April PHC, the parties resolved procedural issues related to the participation of the Aglet Consumer Alliance.

On March 25, 2002, the Assigned Commissioner issued a ruling consolidating the applications into one proceeding, determining that a hearing was necessary, and designating the assigned ALJ as the principal hearing officer.

The Commission held a Public Participation Hearing in each of the captioned 13 districts, including one in each of three smaller districts comprising Cal Water's Northern District, for a total of 15.

On March 29, 2002, ORA distributed its Reports for each district in which Cal Water had requested rate increases. ORA recommended decreases in rates for some of the districts and modest increases for others. Evidentiary hearings were held in San Francisco April 18, 19, 22, 23, 25, and 26, 2002. During the hearings, ORA and Cal Water were able to resolve their differences on many issues and to present a Joint Recommendation.

On July 18, 2002, ORA and Cal Water filed their Motion to Approve Joint Recommendation. Pursuant to ALJ rulings, Cal Water and ORA supplemented the record on August 26, 2002, and November 4, 2002. On January 30, 2003, Cal Water provided revenue requirement and rate design appendices for a draft proposed decision. In addition, on January 30, the Commission adopted D.03-01-081, which found that CWS had acquired two water systems in the Salinas and failed to get Commission approval of these acquisitions and rates. D.03-01-081 asked parties to address why CWS should not be ordered to disgorge all funds collected in violation of PU Codes and to pay a fine.

On February 2, 2003, Cal Water filed a motion requesting that the Commission set interim rates pursuant to § 455.2¹ or, at a minimum, to set an effective date for the final decision. Cal Water stated that it was entitled to interim rates under § 455.2 because a decision had not yet been issued in this consolidated proceeding. In the alternative, Cal Water cited to Commission precedent setting effective dates for rate changes in advance of a final decision.

On February 18, 2003, ORA filed its opposition to Cal Water's motion. ORA stated that § 455.2 does not apply to these proceedings because the statute was adopted after the applications were filed. ORA also opposed setting an effective date because Cal Water had not demonstrated that it was not at fault for the delay or that it was experiencing financial harm.

On February 24, 2003, Cal Water filed a reply to ORA and stated that in November 2002 its corporate credit rating had been downgraded due to "deterioration in regulatory support."

2. Rate Case Plan

The Rate Case Plan² provides a schedule for processing general rate cases. This proceeding is behind schedule. This delay should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates. In Decision (D.) 98-12-078, the Commission found no policy justification for allowing ratepayers to gain from the deferral of rate increases, where such gain would be at the expense of the utility and its shareholders, and where such deferral resulted from delays in the

¹ All citations are to the Public Utilities Code unless otherwise indicated.

² Re Schedule for Processing Rate Case Applications by Water Utilities, 37 CPUC 2d 175 (D.90-08-045).

processing of GRCs. It also found the converse to be true – that shareholders should not gain from the deferral of rate decreases, where such gain would be at the expense of ratepayers. (84 CPUC2d 253 (1998).)

We do not, however, offer such treatment to the Salinas District, where the acquisition of two water systems in violation of the Public Utilities Code has complicated the task of determining rates.

By issuing this interim decision, we are not prejudging the results of Cal Water's GRCs or making any change in authorized rates; nor are we implicating the provisions of Pub. Util. Code § 728. Further, this interim decision should not be used as precedent in any future proceeding.

Comments on Draft Decision

The draft decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. ORA filed comments on March 24, 2003.

ORA argues that there is no need to set an effective date for this General Rate Case decision because CWS has filed for 15 districts simultaneously and because CWS filed deficient applications. ORA argues that CWS is therefore responsible for the delay and relief is not warranted.

CWS filed reply comments on April 1, 2003. CWS argues that ORA's argument that CWS is solely responsible for the delay in the adoption of a GRC decision has no factual basis. CWS notes that hearings ended on April 26, 2002 and briefs were filed in May of 2002, and the record was last reopened five months ago. CWS cites the Commission's Rule 8.1(b), which states: "The proposed decision shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission." CWS argues that it bears no responsibility for these delays.

We believe that the large size and complexity of CWS's filing does not justify the many months of schedule slippage – rates were to be set for test year 2002, and we are well into 2003. In addition, although CWS is responsible for some of the delay, the facts CWS cites make it clear that it is not responsible for all of the delay. Moreover, from this point forward, the record is closed. Delay in adopting a decision will result from Commission deliberation, not the actions of CWS.

Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Cal Water filed general rate case applications for 15 districts on September 21, 2001, with 2002 and 2003 test years, and 2004 and 2005 attrition years.
2. The GRC procedure established by D.90-08-045 provides for a decision on these applications prior to this date.

Conclusion of Law

Cal Water's test year 2003 results of operations and rates should be effective on the effective date of today's decision.

INTERIM ORDER**IT IS ORDERED** that:

1. California Water Services Company's (Cal Water) test year 2003 results of operations and rates to be adopted in this proceeding shall be effective as of the effective date of today's decision for all districts covered in this application except for the Salinas district. By taking such action we are not prejudging the

requested rate increases in Cal Water's application, or the actual changes in authorized rates, if any.

2. The authority being granted in Ordering Paragraph 1 shall not be used as precedent in any future proceeding.

3. Cal Water shall provide notice to its customers that any change in rates resulting from this application shall become effective with the effective date of today's decision. Notice shall be provided via a bill insert and shall be approved by the Commission's Public Advisor's Office prior to mailing. The bill insert notice shall state:

"Cal Water currently has pending before the California Public Utilities Commission a request to increase rates in this district. By Decision 03-__-__, the Commission ordered the rates to be adopted by a final decision in that proceeding to become effective on ____, 2003. By taking such action the Commission is not prejudging the results of Cal Water's request for a general rate increase or the changes in authorized rates, if any."

4. These applications remain open.

This order is effective today.

Dated _____, at San Francisco, California.